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# How the Law Fails Single Mothers

John Barone

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# How the Law Fails Single Mothers

John Barone

Gender and the Law (AWR)

April 28, 2015

## Table of Contents

|   |           |
|---|-----------|
| <b>Introduction.....</b>  | <b>3</b>  |
| <b>I. Effects of Being a Single Parent and the Detriment to Women .....</b> | <b>5</b>  |
| A. The Effects of Being a Single Parent .....                               | 5         |
| B. The Detriment to Women .....   | 7         |
| C. How the Law Makes Women the Default Parent .....                         | 10        |
| <b>II. Introduction to “The Docket” .....</b>                               | <b>12</b> |
| <b>III. How the Child Support System Fails Single Mothers .....</b>         | <b>17</b> |
| A. Imputing Income and In-kind Contributions .....                          | 17        |
| B. The Three Types of Obligor.....  | 20        |
| C. Child Support Enforcement Mechanisms and Their Effectiveness .....       | 24        |
| D. The Lack of and Need for Paternal Involvement in a Child’s Life.....     | 26        |
| <b>II. Fixing a Broken System.....</b>                                      | <b>27</b> |
| A. Fixing the Disproportionate and Disparate Impact on Women.....           | 28        |
| B. Fixing Child Support .....   | 30        |
| C. Involving the Uninvolved .....   | 34        |
| <b>Conclusion.....</b>  | <b>36</b> |

## Introduction

There are an alarming number of single mothers<sup>1</sup> engulfed in a life of poverty with limited opportunities for success due to the overwhelming responsibilities involved in raising a child alone. Meanwhile, men responsible in the co-creation of children escape both financial<sup>2</sup> and parental responsibility.<sup>3</sup> The law<sup>4</sup>, fails single mothers and essentially relegates them to a life of poverty and continuous struggle.<sup>5</sup> Accordingly, I argue that men be held equally accountable for the children that they bring into this world and that any economic or liberty impinging consequence resulting from the birth of a child be shared equally among men and women.

My paper proceeds in four parts. Part I demonstrates that single parent households are at a stark disadvantage compared to two parent households. This section will show that single parents are more likely to be poor, less likely to be college educated, and less likely to own their own home. This part further shows that mothers are significantly more likely than fathers to suffer the negative effects of being a single parent. Part I continues

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<sup>1</sup> The term single mother, single father and single parent shall be used throughout my paper. The terms shall be construed to represent an unmarried, divorced, or separated parent with primary physical custody of at least one child and living apart from the co-parent of said child.

<sup>2</sup> Nancy E. Dowd, *Stigmatizing Single Parents*, 18 HARV. WOMEN'S L.J. 19, 62 (1995).

<sup>3</sup> *Id* at 66.

<sup>4</sup> A reference to "the law" is made throughout my paper. For the purposes of my paper, that term shall be meant to refer to the courts and legislature unless referencing a specific statute or particular court.

<sup>5</sup> Laura M. Vogel, *Children in Poverty: Welfare and Work Together Can Make A Difference*, KAN. J.L. & PUB. POL'Y, SPRING 1994, at 173, 175.

by demonstrating that the law relegates single mothers to poverty. Lastly, Part I will address the role that the law plays in assigning custody to women on the basis of gender.

In Part II I provide a case study to illustrate how the law fails single mothers. This case study will follow a single mother and willful deadbeat obligor<sup>6</sup> over the course of ten years to provide examples of the current system's failures as they apply to each section herein. Additionally, as I recommend changes to the law, this section will be of particular use in reinforcing theoretical concepts and enhancing my arguments.

Part III focuses on child support. I briefly describe how child support is calculated and I demonstrate that imputing income to fathers is foolish because it sets a child support obligation that is unrealistic. Additionally, in this part I explain that setting these unrealistic goals lead fathers withdraw from their children's lives and contributes to their failure to pay child support. I also argue that the law's failure to recognize in-kind harms the entire familial unit. Then, I propose that there are three classifications of obligors and I draw a nexus between the classifications of obligors and how the law fails single mothers. Lastly, in Part III I suggest that the law fails single mothers because it fails to incorporate an element of mandatory visitation as part of a father's child support obligation.

In Part IV I suggest three ways that the law can reduce its negative impact on single mothers. First, I propose that the law fix the disparate impact on women. Specifically, I argue that the laws should be changed to reflect gender neutral custody determinations. Next, I propose that the law stop imputing income to single fathers and recognize in-kind contributions depending on the classification of the nonpaying obligor.

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<sup>6</sup> See *infra* notes 103-106 and accompanying text.

Lastly, I recommend that the law require that fathers be involved in their children's lives as an additional element of child support.

## **I. The Effects of Being a Single Parent and the Detriment to Women**

This part is comprised of three sections. In section A I examine some of the negative consequences experienced by single parents. In section B I move on to disclose that women are four times more likely to become the custodial parent and as such women are disproportionately impacted by the negative effects of being a single parent. In section C I discuss how women become the default parent at the hands of the law. Specifically, I discuss the Massachusetts Child Custody Statute and I explain how this statute plays a role in making women the primary custodian and default parent.

### **A. The Effects of Being a Single Parent**

This section demonstrates that there are certain negative consequences to being a single parent compared to being a co-parent in a traditional nuclear family. Specifically, this section illustrates the financial, emotional, and stigmatic issues that single parents encounter.

Single parenthood has a tremendous effect on the entire familial unit.<sup>7</sup> First and foremost, single parent households are more likely to be in poverty compared to households with both parents present.<sup>8</sup> They also tend to be less educated and earn less than their married counterparts.<sup>9</sup> Lastly, single parent households are less likely to own a

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<sup>7</sup> Johnathan Vespa, Jamie M. Lewis & Rose M. Kreider, *America's Families and Living Arrangements: 2012* (U.S. Census Bureau 2012).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

home when compared to married parents.<sup>10</sup> There are obvious financial benefits to having both parents in the same household. Specifically, childcare concerns decrease, often times they have dual incomes, and partners have the ability to assist one another's growth by assisting them with furthering their education and taking steps toward job advancement as a result of the cooperative nature of the relationship.

From an emotional standpoint, single parents are often under greater stress, and have greater parental anxiety, which is directly related to earning less than their married counterparts.<sup>11</sup> Additionally, single parents are often left to serve the parental role of the absent parent.<sup>12</sup> This adds to existing stress because the custodial parent bears all of the responsibilities, such as the role of caretaker, nurturer, and primary authority figure, without the ability to delegate said roles, which would traditionally be divided between parents.<sup>13</sup>

Society also lays a heavy burden on single parents by stigmatizing them. Specifically, some believe that sex out of wedlock is immoral and classify unmarried mothers as whores.<sup>14</sup> Some even consider single parent families as a euphemism for problem families.<sup>15</sup> While the perception is changing, as there is a rise in the number of single parent households, the stigma still persists and single parent households are still often considered underclass, broken and deviant.<sup>16</sup>

This section demonstrated that there are a plethora of substantial differences in the economical, emotional, and societal expectations of single parent households compared

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<sup>10</sup> *Id.*

<sup>11</sup> Dowd, *supra* note 2, at 33.

<sup>12</sup> *Id.* at 35.

<sup>13</sup> *Id.* at 41.

<sup>14</sup> *Id.* at 42.

<sup>15</sup> *Id.* at 25.

<sup>16</sup> *Id.*

to the traditional nuclear family. In the next section, it is important to recall the financial, emotional and societal difficulty that single parents encounter as I discuss the detriment to women.

### **B. The Detriment to Women**

This section discusses the disparate impact to women as single parents. It addresses problems unique to single mothers and identifies aspects where the law fails women. Additionally, this section shows that single mothers have a difficult time escaping poverty because the law does not have the appropriate mechanisms to help them rise out of poverty. Lastly, this section stresses the importance of child support for single mothers on the verge of poverty.

While we expect that there will be differences between socioeconomic standing of married parents and single parents, what we as a society might not expect is that there is a significant disparity between single parent households based on the gender of the parent. Specifically, more than eighty percent of all single parent households are led by single mothers.<sup>17</sup> Accordingly, there is a disproportionate impact on women, whereby women are likely to be the custodian at a ratio of 4:1.<sup>18</sup> Therefore, it is paramount to conceptualize that any negative effects which arise from being a single parent are four times more likely to be experienced by women compared to men.<sup>19</sup> As such, the financial, emotional, and stigmatic effects discussed in the previous section are four times more likely to be experienced by women.

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<sup>17</sup> Johnathan Vespa, Jamie M. Lewis & Rose M. Kreider, America's Families and Living Arrangements: 2012 (U.S. Census Bureau 2012).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

In addition to the disparate impact, single mothers also face particular problems that do not extend to single fathers.<sup>20</sup> Specifically, single mothers usually earn less than their male counterparts and tend to be less educated.<sup>21</sup> Additionally, single mothers often have to leave the workforce because cannot afford to pay for childcare with their low income.<sup>22</sup> The law fails to account for and address these issues, often leaving single mothers in poverty and dependent on welfare.

When a single mother works to rise out of poverty, she is pulled right back in by one of many forces.<sup>23</sup> Specifically, one of the biggest hurdles for single mothers is the loss of government assistance when they take low wage employment.<sup>24</sup> In her law review article titled *The Welfarization of Family Law*, Tonya L. Brito describes some of the government assistance programs<sup>25</sup> as follows:

At a gut level when people say welfare they mean AFDC and its successor program, Temporary Assistance to Needy Families (TANF); indeed, the terms AFDC and welfare have become indistinguishable. When referring to welfare, this Article employs the narrower and far more common meaning of welfare as AFDC/TANF. Consequently, welfare law consists of the multifaceted statutes, regulations, and administrative agency decisions that address the AFDC/TANF programs (and their state-level counterparts).

In order to obtain and maintain government assistance, a single mother must have income that is within the income limits of the specified government assistance program.<sup>26</sup> Accordingly, if a single mother earns too much money she will lose her government

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<sup>20</sup> See *infra* notes 17-19 and accompanying text.

<sup>21</sup> Vogel, *supra* note 5, at 175.

<sup>22</sup> Andrea L. Miller, *The Separate Spheres Ideology: An Improved Empirical and Litigation Approach to Family Responsibilities Discrimination*, 99 MINN. L. REV. 343, 354 (2014).

<sup>23</sup> Vogel, *supra* note 5, at 175.

<sup>24</sup> *Id.*

<sup>25</sup> Tonya L. Brito, *The Welfarization of Family Law*, 48 U. KAN. L. REV. 229, 233 (2000).

<sup>26</sup> Amy E. Hirsch, *Income Deeming in the AFDC Program: Using Dual Track Family Law to Make Poor Women Poorer*, 16 N.Y.U. REV. L. & SOC. CHANGE 713, 723 (1988).



assistance.<sup>27</sup> Specifically, she may lose the money provided for food in addition to Medicaid health coverage for her and her child even if she works full time in a minimum wage position.<sup>28</sup> Even though she might not be earning enough to survive, she earns too much too qualify for those benefits by working a low-wage job.<sup>29</sup> Often times in these instances the only option is not to work and become dependent on public assistance.<sup>30</sup>

Another problem facing single mothers is a federal law<sup>31</sup> that requires the state to seize any child support payments collected on behalf of a family receiving government assistance, until the money collected from child support payments exceeds the welfare benefit received by the family.<sup>32</sup> The seized money is used to reimburse the welfare system instead of going to the struggling family.<sup>33</sup> While some could say that this is fair reimbursement, it does nothing to assist the mother and child out of the cycle of poverty. In other words, despite the fact that a family is struggling on welfare, the law mandates that money collected to support a child must go to reimburse the government instead of being used to lift a family from the cycle of poverty.<sup>34</sup>

Armed with the knowledge that a single mother dependent on government assistance will not see a child support payment unless it exceeds money owed to the government<sup>35</sup>, mothers who actually receive child support heavily rely on incoming payments to keep themselves out of poverty.<sup>36</sup> In cases where a single mother is not on

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<sup>27</sup> Brito, *supra* note 25, at 233.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> 42 U.S.C.A. § 657 (West 2014).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See *supra* notes 31-33 and accompanying text.

<sup>36</sup> Drew A. Swank, *Enforcing the Unenforceable: Child Support Obligations of the Incarcerated*, 7 U.C. DAVIS J. JUV. L. & POL'Y 61, 64 (2003).

welfare and earns a low-moderate income, child support payments make up a substantial portion of household income, keeping families self-sufficient and out of poverty.<sup>37</sup> For these families, that periodic child support payment is the only thing keeping them out of poverty.<sup>38</sup>

In sum, single mothers in poverty have the near impossible task of escaping poverty. For some single mothers, the only thing keeping them out of poverty are the child support payments that they receive. As a single parent, women are at a significant disadvantage compared to men, especially considering that the law makes them the default parent.

### **C. How the Law Makes Women the Default Parent**

This section identifies legislative and judicial concepts that cause women to become the custodial parent. First this section explores statutory language that assigns mothers as the default parent based on their gender. Additionally, this section addresses the role of gender stereotyping in the judicial decision making process which results in the improper and disproportionate assigning of custody based on gender.

Gender certainly plays a part in how unmarried mothers wind up being the custodial parent.<sup>39</sup> When a baby is born it is obvious and apparent who the birth mother is. Accordingly, if the identity of the father is unknown, or in dispute, the only realistic custodian is the birth mother. With that said, the law plays an enormous role in shifting the burden of custody to the single mother as opposed to the single father.<sup>40</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See *Infra* notes 40-49 and accompanying text.

<sup>40</sup> Mass. Gen. Laws Ann. ch. 209C, § 10 (West 2014).

First, even when the identity of the father is known, some states have laws in place that determine child custody based on the gender of the unmarried parent.<sup>41</sup> Specifically, fifteen states have default rules that automatically grant sole custody to unmarried mothers.<sup>42</sup> Additionally, the plain language of some custody statutes requires that unmarried men take the mother to court for a custody determination.<sup>43</sup> For example the Massachusetts Custody Statute<sup>44</sup> states:

Prior to or in the absence of an adjudication or voluntary acknowledgment of paternity, the mother shall have custody of a child born out of wedlock. In the absence of an order or judgment of a probate and family court relative to custody, the mother shall continue to have custody of a child after an adjudication of paternity or voluntary acknowledgment of parentage.

Facially, it appears that custody statutes similar to the Massachusetts statute are written to protect women and children, however statutes containing this language automatically burden women with custody and do not require any action on behalf of a father. As such, the mere inaction of a legal father is enough to shift the custodial burden to women. Accordingly, laws ordering custody to a specific gender without taking into consideration any other factors, short change children and doom single mothers to poverty.

Even where laws appear to be facially neutral, culture fosters an atmosphere in which mothers are assumed to be the default parent.<sup>45</sup> Specifically, in today's culture

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<sup>41</sup> *Id.*

<sup>42</sup> Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 STAN. L. REV. 167, 203 (2015).

<sup>43</sup> Mass. Gen. Laws Ann. ch. 209C, § 10 (West 2014).

<sup>44</sup> *Id.*

<sup>45</sup> Naomi Mezey & Cornelia T.L. Pillard, *Against the New Maternalism*, 18 MICH. J. GENDER & L. 229, 232 (2012).

women are assumed to be the default parent and are celebrated as such.<sup>46</sup> This is evidenced by the countless mommy blogs, cookbooks, magazines, and advertisements among other things, that feature and appeal to mothers.<sup>47</sup> However, it is troubling that culture and gender stereotypes often play a role in the judicial decision making process.<sup>48</sup> More specifically, a significant portion of the judicial decision making process requires that judges make assumptions about human nature and psychology to further justice and the goals of public policy.<sup>49</sup> When the assumptions a Judge makes are based on inaccurate or antiquated perceptions, it can cause substantial harm to all parties involved.<sup>50</sup> For instance, in the case of child custody, while it might be in the best interest of all parties to grant custody to the father, the court may award custody to a mother based on inaccurate perceptions and gender stereotyping instead of the totality of the circumstances.

In sum, the law plays an active role in assigning custody to women. The law awards custody in a significant number of cases exclusively on the gender of the parent via statutory language and gender-based stereotypes.

## **II. Introduction to “The Docket”**

This part describes a child support case that lasted ten years. I use this case to illustrate the challenges single mothers encounter when they try to obtain child support from fathers who can pay but refuse to do so. It is important to note that this case is not an extreme case as the mother is not in poverty and the obligor is not deadbroke.<sup>51</sup> This

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Miller, *supra* note 22, at 359.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> See *infra* note 92-96 and accompanying text.

case was specifically chosen because it falls in the middle of the spectrum and thereby is representative of a typical willful non-paying obligor case.

Freddie and Rosemary<sup>52</sup> began dating in 1990 and during their relationship they created two children. Specifically, in 1992 J.D. was born and in 1994 S.D. was born. In late 2001 their relationship was in trouble and would eventually come to an end. Freddie would leave the household and Rosemary was left to raise two children on her own. Freddie worked for a transportation company and was paid in cash, earning roughly \$700-\$1000 per week.<sup>53</sup> Rosemary was the General Manager for a mid-size hotel chain, earning roughly \$800 per week.<sup>54</sup> Rosemary attempted to negotiate a child support payment plan directly with Freddie, but she was unsuccessful. Early in 2002, in response to Freddie's failure to provide financial support for their two children, Docket #FD-09-002455-02 was filed in the Superior Court of New Jersey, Hudson Vicinage.<sup>55</sup> This case shall be known and referenced herein as "The Docket".

After filing her petition, her case was heard before a hearing officer. Rosemary was blindsided during the hearing when Freddie claimed that he was unemployed and had not worked in months. He provided a grim tale of tough times and how he was constantly searching for employment. He told the hearing officer that he was already in arrears in his child support obligation for other children from a prior relationship and did

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<sup>52</sup> Rosemary Barone is my mother. When she died in 2012, she left behind a folder containing court documents, notes, pay stubs, and receipts. For this section, I will specifically cite any document that I have actually reviewed. However, some parts of this section come from my own recollection. While my mother was alive, I would go to court with her to provide moral support. As such, I saw first-hand how the law failed her time and time again. Any portion of this section not containing a citation was derived from information in the form of my own recollection. Watching my mother struggle, particularly toward the end of her life, has served as the inspiration for my paper. Accordingly, my paper is written in her honor.

<sup>53</sup> These figures come from Rosemary's notes, pay stubs and W-2 forms.

<sup>54</sup> *Id.*

<sup>55</sup> *Barone v. De Jesus*, No. FD-09-2455-02 (N.J. Super. Ct. Ch. Div. Mar. 14, 2002).

not know how he would meet a new burden on top of his existing one.<sup>56</sup> Rosemary pleaded with the court, explaining that Freddie was paid in cash, but she had no proof. The reality is that Freddie was in fact thousands of dollars in arrears in another child support case, as there was another docket<sup>57</sup> involving his three non-custodial children from a prior relationship. I will refer to this docket herein as “Docket Number Two.” The court declined to impute income<sup>58</sup> to Freddie at this point because they found that he was involuntarily unemployed.<sup>59</sup> The court gave him an opportunity to seek gainful employment and required that he pay a \$70 per week in child support.<sup>60</sup>

By July of 2003 Freddie was in arrears of \$4,777 in regards to his child support obligation for “The Docket”.<sup>61</sup> As his arrears began to pile up, there would often be outstanding warrants for civil contempt, but Freddie knew how to game the system. Specifically, he knew that if he made an appearance in court with some money, that the Judge would likely vacate the warrant. Accordingly, he periodically made payments, and those small periodic payments were usually enough to keep the warrants at bay for the most part. Even when he was arrested, as soon as he would go before a Judge he would negotiate a nominal, one-time payment to secure his release. Within a few hours Freddie would make a payment and be released.

Around 2005 Freddie had essentially disappeared and stopped making child support payments on both dockets. Accordingly, by June of 2007, Freddie had outstanding warrants for civil contempt on both child support dockets as he had

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<sup>56</sup> See *infra* note 57 and accompanying text.

<sup>57</sup> *De Jesus v. De Jesus*, No. FD-09-1355-86 (N.J. Super. Ct. Ch. Div. Feb. 13, 1986).

<sup>58</sup> See *infra* notes 70-73 and accompanying text.

<sup>59</sup> *Barone v. De Jesus*, No. FD-09-2455-02 (N.J. Super. Ct. Ch. Div. Mar. 14, 2002).

<sup>60</sup> *Id.*

<sup>61</sup> *Barone v. De Jesus*, No. FD-09-2455-02 (N.J. Super. Ct. Ch. Div. Jul. 25, 2003).

combined child support arrears of roughly \$28,000. Freddie was eventually arrested on those warrants and at the time of his arrest, Freddie was operating a vehicle belonging to the company that he had denied working for during all of his past court appearances. Upon his arrest, Freddie presented the officer with a driver's license that was fraudulently obtained. Specifically, it was later discovered Freddie had altered his date of birth on his birth certificate and deleted the middle initial from his name when he filed the paperwork to fraudulently obtain a clean driver's license that was not suspended.

Rosemary was notified of Freddie's arrest and a hearing date was set. This time, the Judge showed no mercy. Freddie attempted to lie his way out of jail, but the Judge now knew that Freddie had deceived him. The police officer testified at the hearing and Freddie proffered a theory that the Judge rejected. Freddie testified that it was his first day back to work and he told the Judge he was trying to get his life together. The Judge rejected that notion and ordered that Freddie be incarcerated until he paid the full amount of child support owed. Over the next few months Freddie sat in jail. There would be several hearings and each time the Judge would bring the amount of bail down slightly. Eventually, Freddie came up with close to \$10,000 and he was released from Jail.

The court secured almost \$10,000 and Rosemary was ecstatic. The court was done failing her. She was going to get her money, money that she had already laid out for the children, money she spent on clothing, healthcare, school supplies, food, rent and other miscellaneous expenses. She waited, she waited, and she waited. No check ever came. No money ever posted to her account. She knew in her gut that something was terribly wrong and she inquired with the court as to where her check was. Upon contacting the court Rosemary was boldly reminded that there was another docket and was told that there was

a problem. The mother and children of the second docket were on welfare. They had received funds from government assistance and the money paid to them, was as a matter of law<sup>62</sup> to be paid to the government first. After pleading with the court over the course of several weeks, the Judge ordered that the monies obtained be split between the two dockets, in an amount proportional to the amount of arrears owed in each docket.

While my paper has used their initials to shield their identities, this is a real life story about an eight-year-old girl and a six-year-old boy that watched their father leave their family. Freddie rarely called the children and saw them less than five times over the ten-year span of this docket. Both children strongly resent the fact that they were left behind. They feel abandoned and still search for answers as to why he left. While they did each individually exhibit mild academic and behavioral problems over the years, what is worse is the emptiness that they feel. The feeling of senseless abandonment will stick with them for a long time and the current laws fail to address that issue. The effects on these children had a direct effect on Rosemary. Particularly, Rosemary was left with the responsibility of being both a mother and a father.

Rosemary was better off than most obligors. She was not in poverty during the years of “The Docket”, however Rosemary’s situation would take a turn for the worse. In 2008 Rosemary was diagnosed with lung cancer. Accordingly, her financial situation changed drastically and she needed that child support money more than ever. In 2010 she petitioned the court for an increase in child support.<sup>63</sup> She was awarded a small increase as the court now imputed income to Freddie.<sup>64</sup> However, the amount of the award did not matter, as he would never pay. She spent her last years and months chasing a deabeat. In

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<sup>62</sup> See *supra* notes 31-33 and accompanying text.

<sup>63</sup> *Barone v. De Jesus*, No. FD-09-2455-02 (N.J. Super. Ct. Ch. Div. Feb. 09, 2010).

<sup>64</sup> *Id.*



the end, the law failed her as it does many single mothers. Shortly after her death, Freddie filed an ex-parte motion where he closed “The Docket” and the arrears were dismissed.<sup>65</sup>

In sum this case is demonstrative of how the current child support system fails single mothers. In the next Section I will explain the child support system failures and use “The Docket” to compare and contrast theory with reality.

### **III. How the Child Support System Fails Single Mothers**

In Section A of this part I will start off by proving that there is a nexus between non-payment of child support and poverty. Next, I discuss how the law imputes income to parents that are unemployed and underemployed without taking into account the totality of the circumstances. In Section B, I propose that there are three classifications of obligors. These classifications become an important part of my paper as I discuss child support enforcement mechanisms in Section C. Lastly, in Section D, I examine the fact that there are no mandatory visitation requirements in any child support statute.

#### **A. Imputing Income and In-Kind Contributions**

This section will discuss why child support is important. It will provide a rough foundation for how child support is calculated and it will introduce the concepts of imputed income and in-kind contributions. Specifically, this section will demonstrate why imputing income to fathers is foolish and why in-kind contributions should be recognized by the law.

Nonpayment of child support is the leading cause of child poverty.<sup>66</sup> Additionally, for some single mothers, child support payments are the only thing keeping them and

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<sup>65</sup> *Barone v. De Jesus*, No. FD-09-2455-02 (N.J. Super. Ct. Ch. Div. Aug. 30, 2012).

<sup>66</sup> Swank, *supra* note 36, at 64.

their children out of poverty.<sup>67</sup> When it comes to child support, the law fails single mothers in two major categories. First, the law fails single mothers by imputing income to fathers that are unemployed and underemployed. Additionally, the law fails single mothers by failing to recognize in-kind child support contributions.

The three leading formulas used in calculating child support are the percentage of income method, the income shares approach, and the Melson formula.<sup>68</sup> Regardless of the method used, the calculations provide similar monetary obligations for the non-custodial parent.<sup>69</sup> Additionally, each method incorporates a mechanism of imputing income.<sup>70</sup> This means that regardless of what a parent actually earns, the court makes an assumption based on prior work or based on a person's skill set.<sup>71</sup> Once that assumption is made, the assumed number is imputed into the child support calculation and a child support obligation is computed.<sup>72</sup> This obligation governs regardless of whether the obligor can actually meet the obligation.<sup>73</sup> This sets the father up for failure, but more importantly, this hurts single mothers because fathers that cannot meet their child support obligation are more likely to withdraw from their children's lives, thereby leaving the mother to serve in both parental roles.<sup>74</sup> Additionally, this goes hand in hand with in-kind child support contributions, because a father that has withdrawn from a child's life is less likely to provide in-kind contributions.<sup>75</sup>

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<sup>67</sup> Office of Child Support Enforcement, U.S. Dep't of Health & Human Services, C.S. Fact Sheet No. 1, (2011), available at [http://www.acf.hhs.gov/sites/default/files/ocse/family\\_centered\\_innovations.pdf](http://www.acf.hhs.gov/sites/default/files/ocse/family_centered_innovations.pdf).

<sup>68</sup> § 1.08 CHILD SUPPORT GUIDELINES MODELS, CSGIA s 1.08.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families*, 15 J. GENDER RACE & JUST. 617, 632 (2012).

<sup>74</sup> *Id.* at 644.

<sup>75</sup> *Id.* at 656.

In-kind contributions are non-monetary tangible contributions for the care and needs of a child.<sup>76</sup> In-kind contributions often include items such as baby formula, diapers, groceries, toys, etc.<sup>77</sup> Current child support guidelines dictate that the obligor shall not be credited for providing in-kind or informal payments.<sup>78</sup> In other words, in the eyes of the law, in-kind contributions count for nothing. The law's failure to recognize in-kind contributions is harmful to single mothers because the lack of recognition causes fathers to withdraw from their children's lives and as a result, the single mother now has the burden of making up for those in-kind contributions from her own funds.<sup>79</sup> Additionally, the law's failure to acknowledge in-kind contributions is particularly harmful to low-income single parents.<sup>80</sup> Specifically, the law's failure to recognize in-kind contributions pits low-income mothers against low-income fathers exacerbating conflict within their relationships.<sup>81</sup> Accordingly, the failure of the law to recognize in-kind contributions by single fathers is particularly harmful to single mothers because the law's lack of recognition causes paternal withdrawal and requires single mothers to be the sole provider and caretaker for their children.<sup>82</sup>

In applying the theory of this section to "The Docket" the notion of imputing income to the willful deadbeat obligor was futile. While the court initially set the financial obligation for Freddie at the minimum required under law, he was later imputed

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<sup>76</sup> Solangel Maldonado, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. DAVIS L. REV. 991, 1004 (2006).

<sup>77</sup> *Id.*

<sup>78</sup> Laurie S. Kohn, *Engaging Men As Fathers: The Courts, the Law, and Father-Absence in Low-Income Families*, 35 CARDOZO L. REV. 511, 539 (2013).

<sup>79</sup> Maldonado, *supra* note 76, at 1005.

<sup>80</sup> Kohn, *supra* note 78, at 540.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

an income of \$500 per week in 2010.<sup>83</sup> Regardless of the actual dollar value used to calculate his income, he still continuously failed to meet that obligation. However, despite the fact that Freddie did not pay child support, he did make in-kind contributions on the few occasions when he did see the children. Specifically, he provided the children with gift cards so that they could go shopping and he would take them out to eat. When the children received gift cards, Rosemary received some financial relief as the children were able to use those gift cards to purchase clothes and school supplies. Accordingly, from the perspective of the docket the two key takeaways are that imputing income to deadbeat parents is futile and there is a nexus between paternal involvement and in-kind contributions.

In sum, imputing income to fathers that do not have the means to fulfill the obligation does more harm than good whereas it does too little to deter deadbeats. Additionally, setting standards that a father cannot meet will likely result in fathers withdrawing from their children's lives. The same is true regarding the law's failure to recognize in-kind child support contributions. Ultimately the law fails single mothers because it leaves the mother playing the role of both parents and takes what little contributions the father had been making and dispenses with them by failing to acknowledge in-kind child support payments.

### **B. The Three Types of Obligors.**

In this section I identify three types of obligors. These classifications play a role in pinpointing how the law fails single mothers by categorizing concepts that shortchange them. Additionally, I declare that the law is inflexible in its current approach by failing to differentiate between the deadbroke and deadbeat fathers.

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<sup>83</sup> *Barone v. De Jesus*, No. FD-09-2455-02 (N.J. Super. Ct. Ch. Div. Feb. 09, 2010).

When it comes to fulfilling child support obligations, there are three kinds of child support obligors. First there is the obligor who fulfills his duty. This obligor will be referred to as the paying obligor. Next, is the deadbroke obligor.<sup>84</sup> This obligor is one who simply cannot afford to meet the terms of the child support order because they do not have the money to meet their obligation.<sup>85</sup> Lastly, is the willful deadbeat obligor. A willful deadbeat obligor has the money to pay child support, but refuses to do so.

A non-custodial paying obligor may fully fulfill his duties and the law may simultaneously fail single mothers.<sup>86</sup> Under all three child support calculation models, the guidelines generally require a minimum expected contribution from the non-custodial parent.<sup>87</sup> Generally, this minimum expected contribution is somewhere between twenty and fifty dollars weekly.<sup>88</sup> For instance, a father may be able to make the minimum payment, fulfilling the court ordered obligation while the custodial mother is paying for the actual expenses incurred for the child.<sup>89</sup> In other words, when there is a strict adherence to the guidelines, the non-custodial parent could be receiving a minimum payment in accordance with the order, however that minimum may not be enough to actually support the child.<sup>90</sup> Accordingly, the single mother is left to fill the gap and find a way to provide for the child.<sup>91</sup>

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<sup>84</sup> Maldonado, *supra* note 76, at 1003.

<sup>85</sup> *Id.* at 1004.

<sup>86</sup> *See infra* notes 87-91 and accompanying text.

<sup>87</sup> Brito, *supra* note 73, at 638.

<sup>88</sup> *Id.*

<sup>89</sup> Catherine Wimberly, *Deadbeat Dads, Welfare Moms, and Uncle Sam: How the Child Support Recovery Act Punishes Single-Mother Families*, 53 STAN. L. REV. 729, 755 (2000).

<sup>90</sup> Maureen Atwell, *The Use of Social Media Evidence in Criminal Child Support Prosecutions*, 7 PHOENIX L. REV. 1, 11 (2013).

<sup>91</sup> *Id.*

The law certainly fails single mothers with its approach on deadbroke obligors.<sup>92</sup> Deadbroke obligors fail to meet their obligations for a variety of reasons.<sup>93</sup> They may be unemployed, underemployed, incarcerated and/or have health problems.<sup>94</sup> Often times the court will impute income to persons in this category.<sup>95</sup> By imputing income, the law starts by setting a financial obligation that the father is not able to meet.<sup>96</sup> Then, when the father fails to meet his unrealistic legal obligation, the law will punish him for not meeting that obligation.<sup>97</sup> Setting unrealistic goals directly impacts the entire family unit. Non-custodial parents who pay child support are more likely to be involved in the child's life.<sup>98</sup> Accordingly, if the father cannot afford to pay, he is likely to withdraw from the child's life.<sup>99</sup> The single mother loses out financially, and may be further harmed if the father was providing in-kind support that she now has to compensate for.<sup>100</sup> The child is harmed because they will likely not have a healthy relationship with their father.<sup>101</sup> The deadbroke father suffers perhaps the biggest loss because he will likely be incarcerated for failing to meet the unrealistic financial obligation set for him by the court.<sup>102</sup>

Lastly, is the willful deadbeat obligor. The willful deadbeat obligor has the means to support his child, yet refuses to contribute financially as a parent when he is legally responsible to do so.<sup>103</sup> The willful deadbeat obligor purposefully evades their legal

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<sup>92</sup> See *infra* notes 93-95 and accompanying text.

<sup>93</sup> See *infra* note 94 and accompanying text.

<sup>94</sup> Brito, *supra* note 73, at 633.

<sup>95</sup> Maldonado, *supra* note 76, at 1003.

<sup>96</sup> Brito, *supra* note 73, at 640.

<sup>97</sup> Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 360 (2005).

<sup>98</sup> Swank, *supra* note 36, at 65.

<sup>99</sup> *Id.*

<sup>100</sup> Maldonado, *supra* note 76, at 1013.

<sup>101</sup> *Id.* at 996.

<sup>102</sup> Brito, *supra* note 73, at 642.

<sup>103</sup> Atwell, *supra* note 90, at 9.

obligation in a deceitful, dishonest, cheating manner.<sup>104</sup> Particularly, willful deadbeat obligors often portray a false image to the court and surreptitiously maintain a lifestyle inconsistent with their sworn testimony.<sup>105</sup> Specifically, some willful deadbeat obligors work jobs that pay cash in an attempt to evade their child support obligation.<sup>106</sup> While facially it may appear that willful obligors are solely at fault, the law fails single mothers by its failure to deter and detect the willful deadbeat obligor.<sup>107</sup> First and foremost, the routine child support enforcement methods the law uses fail single mothers because they are inadequate to discover and collect from obligors who receive undocumented income.<sup>108</sup> Next, while some courts may impute income, in this instance it is irrelevant what income the court imputes because common sense dictates that the willful deadbeat obligor is not going to pay anyway. It can also be reasoned that the current enforcement mechanisms drive fathers to seek off the books employment.<sup>109</sup> Specifically, it has been argued that intercepting tax refunds and garnishing wages to reimburse the government for welfare payments could be one of the driving forces that lead fathers to seek off the books employment.<sup>110</sup>

In summation, while the law does not differentiate between deadbroke and deadbeat fathers, I argue that the classifications are essential, and without them the law will continue to fail single mothers. The next section will demonstrate that the type of obligor is a crucial element in the law's ability to enforce child support obligations.

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> See *infra* notes 108-110 and accompanying text.

<sup>108</sup> Brito, *supra* note 73, at 658.

<sup>109</sup> Stacy Brustin, *Child Support: Shifting the Financial Burden in Low-Income Families*, 20 GEO. J. on POVERTY L. & POL'Y 1, 52 (2012).

<sup>110</sup> *Id.*

### **C. Child Support Enforcement Mechanisms and Their Effectiveness**

This section discusses the various methods used to enforce child support orders and obligations. Additionally, this section compares and contrasts the methods to demonstrate their effect on deadbeat versus deadbroke parents.

When a person fails to pay child support, a court may seize bank accounts, order wage garnishment, intercept tax refunds, place liens on property, restrict or revoke driver's and occupational licenses, etc.<sup>111</sup> Additionally, in most states, failure to pay child support can result in civil contempt and a non-paying parent can be punished with incarceration.<sup>112</sup>

The effects of applying these child support mechanisms have different effects on the different types of child support obligor.<sup>113</sup> Specifically, in regards to deadbroke obligors, some of the enforcement mechanisms have been viewed as punitive and counterproductive in light of their actual inability to pay.<sup>114</sup> For instance, if a person is working a full forty-hour work-week as a truck driver and their obligation exceeds their income, a court might suspend their driver's license for failing to meet their obligation.<sup>115</sup> This effectively stops the parent from working and would likely result in job loss and subsequent incarceration.

In contrast, these mechanisms may not be enough to stop a willful deadbeat obligor.<sup>116</sup> If a person earns undocumented income there will be no wage to garnish, no

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<sup>111</sup> Brito, *supra* note 73, at 650.

<sup>112</sup> *Id.* at 656.

<sup>113</sup> Drew A. Swank, *Das Boot! A National Survey of Booting Programs' Impact on Child Support Compliance*, 4 J. L. & FAM. STUD. 265, 275 (2002).

<sup>114</sup> Brito, *supra* note 73, at 621.

<sup>115</sup> Murphy, *supra* note 97, at 348.

<sup>116</sup> Atwell, *supra* note 90, at 10.



tax return to intercept and likely no bank account to seize.<sup>117</sup> Additionally, willful deadbeat obligors have been known to take measures to conceal property that they own by putting title under the name of another person.<sup>118</sup> Accordingly, the best mechanism to enforce the child support obligation against a willful deadbeat obligor might just be incarceration. There is a surprising phenomenon common amongst willful deadbeat obligors, whereby within a few hours of incarceration they are often able to come up with large sums of money to free themselves from jail.<sup>119</sup>

In applying the theory of this section to “The Docket”, Freddie did not maintain a bank account and never had any recorded wages to garnish or tax returns to intercept. Accordingly, any means of collecting child support was futile unless he actually elected to relinquish the money. While he occasionally did make payments, the best mechanism for enforcing his obligation was incarceration. He routinely provided funds to secure his release, but also routinely failed to meet his child support obligation unless he was doing so from inside the jail. Additionally, Freddie was able to obtain a fraudulent license with minimal trouble; as such, suspending his driver’s license was also meaningless. The main takeaway from the perspective of the “The Docket” is that child support enforcement mechanisms need to be tailored to the individual category of the obligor.

In sum, child support enforcement mechanisms are futile if the parent is deadbroke. In contrast, if the parent is a willful deadbeat obligor, most of the enforcement options will not work, but incarceration might just be the solution. Additionally, the law fails single mothers by its failure to distinguish between the two types of non-paying obligors.

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 11.

<sup>119</sup> *Id.* at 14.

#### **D. The Lack of and Need for Paternal Involvement in a Child's Life.**

This section discusses the effects of a father not being involved in their children's lives and the added consequences that a mother experiences as a result. Additionally, this section demonstrates how a mother benefits when the non-custodial parent is involved.

Another way that the law fails single mothers, is by its omission of a requirement that the non-custodial parent be involved in a child's life.<sup>120</sup> The right to visitation is exclusively at the discretion of the non-custodial parent.<sup>121</sup> The lack of legislation requiring a parent to be involved in a child's life is harmful to both parents and the child.<sup>122</sup> The majority of non-custodial fathers are not involved in their child's life.<sup>123</sup> Children suffer greatly when a father is not involved in their lives.<sup>124</sup> Specifically, children without paternal involvement are more likely to experience academic and behavioral problems.<sup>125</sup> More importantly, when a father stops being involved in their child's life, it leaves the child feeling empty and rejected.<sup>126</sup> As a result, the single mother is the parent that has to manage the consequences of the uninvolved father.

The custodial parent can also benefit from the non-custodial father being involved in the child's life.<sup>127</sup> Studies have shown that fathers who see their child on a regular

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<sup>120</sup> Daniel Pollack & Susan Mason, *Mandatory Visitation in the Best Interest of the Child*, 42 FAM. CT. REV. 74 (2004).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Maldonado, *supra* note 76, at 996.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 997.

<sup>126</sup> *Id.* at 998.

<sup>127</sup> *Id.*

basis are more likely to pay child support.<sup>128</sup> Additionally, fathers who see their child are also more likely to make in-kind contributions.<sup>129</sup> Financially, both in-kind and monetary payments are beneficial to the custodial parent.<sup>130</sup> Also, when a father is consistently involved in a child's life, it gives a single mother a valuable gift; free time.<sup>131</sup> This could enable a single mother to pursue employment, attend school, or relax and reduce stress. Lastly, the non-custodial father also benefits from involvement in the child's life. Specifically, there are social and emotional benefits to being an involved father.<sup>132</sup> Specifically, involved fathers are more likely to exhibit psychosocial maturity, exhibit empathy and have fewer premature and accidental deaths.<sup>133</sup>

In summation, this section addressed how the lack of a visitation requirement negatively effects the entire family unit and unduly burdens single mothers. Additionally, this section demonstrated that a single mother receives certain fringe benefits when a father is involved in his children's lives. Accordingly, single mothers are often stripped of these benefits because the law fails to keep fathers involved.

#### **IV. Fixing a Broken System**

This part provides recommendations to fix the law, to lessen the financial and caretaker burden on single mothers thereby coming closer to achieving equality as it applies to the burden and detriment of being a single parent. Section A provides recommendations to fix the disproportionate and disparate impact on women.

Specifically, this section provides alternatives to current laws that make women the

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 1006.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 1019.

<sup>132</sup> Rebecca Moulton, *Who's Your Daddy?: The Inherent Unfairness of the Marital Presumption for Children of Unmarried Parents*, 47 FAM. CT. REV. 698, 704 (2009).

<sup>133</sup> *Id.*

default parent. Section B makes recommendations on how the law can fix the child support system. Particularly, this section focuses on utilizing the three categories of obligors and tailoring the law to respond to each category in the most effective manner. Lastly, section C discusses ways that the law can keep fathers involved in their children's lives. Accordingly, this section proposes a requirement of mandatory visitation and discusses the legal and practical difficulty in implementing such a requirement.

#### **A. Fixing the Disproportionate and Disparate Impact on Women**

In Part I, I discussed the disproportionate and disparate impact on women. Specifically, I offered that more than eighty percent of all single parent households are led by single mothers,<sup>134</sup> and as a result women are four times more likely to feel the effects of being a single parent. In order to fix that disparity, society as a whole needs to be truly honest and examine why women are left as the custodial parent most of the time. I proffer that the law plays a large role in shifting the burden to women. Specifically, I made reference to statutes such as the Massachusetts Custody Statute,<sup>135</sup> which make an automatic custody determination based on gender as the sole criterion for unwed parents and require that a man bring a legal action if he wants custody. Ideally, laws should be rewritten to be facially neutral and tweaked until they have no disparate impact.

It is more important that we rid the judicial making process of the constant and ever-present use of gender stereotypes. Earlier, I made it clear that gender stereotypes often play a role in the judicial decision making process.<sup>136</sup> If we fail to change how the judiciary makes decisions, then we will continue to have gender bias outcomes and women will never stand on equal ground.

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<sup>134</sup> See *supra* note 17 and accompanying text.

<sup>135</sup> Mass. Gen. Laws Ann. ch. 209C, § 10 (West).

<sup>136</sup> Miller, *supra* note 22, at 359.

To level the playing field, I would advocate a system that requires men and women split the burden of childcare equally. Specifically, statutes should require men and women to share custody equally unless there is a clear and present danger to the child or extenuating circumstances, such as a one parent being on active duty in the Armed Forces. Under this proposal shared physical custody would be mandatory, however parents would be able to come to their own agreements so long as financial obligations were met by the parent who elected to be the non-custodial parent or if the person who elected to be the custodial parent waived the right to split the burden, knowing that they would bear the full burden of raising the child. Child support would still be required under this proposal, however the custodial parent would have had been heard by the court, and would not have been placed in the position merely as a result of their gender. If I were to rewrite the Massachusetts Custody Statute, it would read something like this:

Within 180 days of the birth of a child, born to parents out of wedlock, where the father has been identified, both parents shall equally split physical custody of the child and must have a written plan in place, signed by both parents, detailing how physical custody will be equally split between the two parents unless:

- A. There is a clear and present danger that a child would be harmed if they were to be in the custody of one of the parents; or
- B. There are extenuating circumstances that require one parent to be unavailable for a prolonged period of time, such as active Military Service; or
- C. Both parents agree that it is in the best interest of the child that the child is in the sole physical custody of one parent and the parent who will be the sole physical custodian agrees in writing to take on the burden of sole physical custody and the non-custodial parent fulfills their financial obligation for the child.

If a written plan is not in place and a court matter ensues, the court shall generate a plan at its discretion, and the parents, subject to the approval of the court, can modify that plan.

### **B. Fixing Child Support**

In this section I discuss the importance of distinguishing between the deadbeat and deadbroke obligor. I then make an argument for dispensing with routinely imputing income to non-custodial fathers. Lastly, I discuss the need and benefit of acknowledging in-kind contributions.

The key to fixing the child support system is dependent on discerning between the deadbeat and the deadbroke and responding accordingly. Until the law integrates this philosophy, the system will remain a failure. When it comes to the deadbroke obligors, society as a whole must intervene. Deadbroke obligors are often unemployed, underemployed, and/or have health problems.<sup>137</sup> We need to find jobs for the unemployed, better jobs for the underemployed, and assist those that have health problems to the point of recovery so that the deadbroke can transition into the paying obligor role. Additionally, the law needs to recognize that suspending licenses and incarcerating deadbroke fathers only serves a punitive function and accordingly the law should cease to employ these methods. In contrast, courts should show no mercy on the willful deadbeat obligor. Intentionally withholding funds and conducting yourself in a manner to evade financial responsibility for children that an obligor is lawfully required to support is a heinous act. The law should take a proactive role in detecting and prosecuting obligors who work off the books to evade their obligation. Additionally, the law should seize the assets of anyone who aids or abets a willful deadbeat obligor by

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<sup>137</sup> Brito, *supra* note 73, at 633.

allowing the willful deadbeat to put property or title in their name. Prior court cases have demonstrated that one of the most difficult issues to overcome is proving a nexus between being in arrears and the willfulness of that conduct.<sup>138</sup>

The notion of routinely imputing income to a party is self-defeating. Essentially by imputing income to some obligors, the law dooms the obligor to failure. By setting a child support burden that the obligor cannot meet, it will only be a matter of time before the obligor is in arrears, and enforcement action commences against the obligor. Some states have begun reconsidering routinely imputing income to non-custodial parents.<sup>139</sup> The law should take this further and all states should proactively investigate on a case-by-case basis why each obligor has no income. Some argue that the courts do not have the resources to conduct case-by-case analysis.<sup>140</sup> To that notion, I assert that the money spent assessing and remedying the non-paying obligor cases might actually be less than the current cost of enforcing child support obligations. Particularly, if the law remedies the underlying cause for non-payment, it could potentially reduce the expense of incarcerating individuals for failure to pay child support. Accordingly, in examining “The Docket”, if an investigative officer of the court would have done a thorough investigation into Freddie’s life and determined that he was working off the books, then a solution could have been found in lieu of incarcerating him. Specifically, the court could have held Freddie’s employer accountable for failing to report his wages and require that the employer place him on the books so that his wages could be garnished appropriately.

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<sup>138</sup> *United States v. Pillor*, 387 F. Supp. 2d 1053, 1056 (N.D. Cal. 2005).

<sup>139</sup> Brito, *supra* note 73, at 663.

<sup>140</sup> Brustin, *supra* note 109, at 31.

While some argue that imputing income discourages obligors from underreporting income and encourages them to engage in full time employment,<sup>141</sup> I contend that imputing income is useless if we do not discern between the willful deadbeat and the deadbroke. Assessing which type of non-paying obligor the court is dealing with will dictate the court's response. Accordingly, if it is found that an obligor is unemployed or underemployed, the law should offer job assistance and counseling to that individual with the goal of transitioning him to a position where he will become a paying obligor. Alternatively, if it is found that the obligor is working off the books and willfully withholding child support, then the law should take proper judicial action and subsequently impute income to the obligor. While this is not a perfect world and people lie, the best source of information will likely come from the obligee. If courts are going to utilize an income imputing mechanism, prior to its utilization, the court should inquire with the obligee where the obligor is employed and then take steps to confirm or dispel their employment. Failing to make reasonable inquiries into the lives of obligors facilitates the miscategorization of obligors and perpetuates the non-payment of child support. As such, the law fails single mothers, and will continue to do so until it considers and responds to the underlying reasons for non-payment of child support.

Additionally, the law must acknowledge in-kind child support contributions. In-kind contributions, as stated earlier, help keep fathers involved in their child's life.<sup>142</sup> In-kind contributions such as strollers and sneakers are visible contributions that can last a while as opposed to cash, which often disappears quickly.<sup>143</sup> Fathers often take pride in

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<sup>141</sup> Murphy, *supra* note 97, at 358.

<sup>142</sup> Maldonado, *supra* note 76, at 1013.

<sup>143</sup> *Id.* at 1005.



these contributions and stay involved in their child's life as a result.<sup>144</sup> Some scholars recommend that the law require an obligor be actively seeking employment as a condition of the in-kind contribution being recognized by the court.<sup>145</sup> That approach would serve the dual purpose of acknowledging the contributions that a father can afford at the time, while looking at the bigger picture and shifting the focus to getting the father employed. The principal persistence against recognizing in-kind child support is the law's unwavering commitment to enforcing monetary obligations against non-custodial parents.<sup>146</sup> In response, I proffer that the law does single mothers more harm than good. In fact, mothers express an interest in in-kind contributions as it eases their financial burden, even if it is minimal contribution.<sup>147</sup> Additionally, in-kind contributions may be the only contributions that a single mother receives.<sup>148</sup>

While in-kind contributions were not prevalent in "The Docket", which is a willful deadbeat case study, we often do see in-kind contributions among the deadbroke.<sup>149</sup> If the law were to recognize the difference between deadbeat and deadbroke obligors, the law could incentivize the deadbroke by recognizing in-kind contributions thereby achieving the goal of reducing the burden on single mothers by keeping the in-kind support coming in and keeping fathers involved in their child's life.

This section established that the law fails single mothers by not discerning between the deadbeat and deadbroke. Accordingly, imputing income and the law's failure to

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<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 1018.

<sup>146</sup> Kohn, *supra* note 78, at 540.

<sup>147</sup> *Id.* at 541.

<sup>148</sup> *Id.*

<sup>149</sup> Maldonado, *supra* note 76, at 1004.

recognize in-kind support without properly categorizing the obligor has been shown to be counterproductive and exacerbates the law's failure of single mothers.

### C. Involving the Uninvolved

In this section I discuss the absence of legislation requiring fathers be involved in their children's lives. Additionally, I discuss the difficulty of implementing such laws and the effect on single mothers when the law fails to require visitation.

No states have a mandatory visitation requirement for non-custodial parents.<sup>150</sup> Visitation rights of a parent are instead at the discretion of the non-custodial parent and not obligatory.<sup>151</sup> While custodial parents, mostly single mothers, have no option but to serve as a caretaker and disciplinarian, non-custodial parents, mostly fathers, have the option of choosing whether they want to be involved in their child's life.<sup>152</sup> The notion that a father can serve at will while a mother bears the burden of care upsets the actual balance of responsibility imposed on mothers by the law.<sup>153</sup> Some scholars argue that the law cannot force a parent to be involved in a child's life and proclaim that any such law would be unconstitutional.<sup>154</sup> To that notion, I respond by asserting that women have a right to equal protection under the Fourteenth Amendment of the United States Constitution. As such, if the law can require a financial obligation for custodial and non-custodial parents, I assert that it can do the same for the non-monetary obligation of childcare.

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<sup>150</sup> Pollack, *supra* note 120, at 74.

<sup>151</sup> *Id.*

<sup>152</sup> Karen Czapanskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415, 1434 (1991).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 1440.

Some courts have held that requiring mandatory visitation is as harmful to a child as abandonment; the child will realize that the only reason their father is present is to avoid jail.<sup>155</sup> While there is substantial truth to that notion, I believe that there are alternatives to incarcerating an individual that may be persuasive to accomplish the goal of mandatory visitation. For instance, perhaps the law could allow a father to skip one weekly child support payment every three months if they visit their child on a monthly basis for three months in a row. Additionally, the law could offer fathers who are in arrears on their child support payments a stay on contempt proceedings or license suspension if they visit their child.

In examining “The Docket” and applying it to this section, there would have been several benefits to Freddie being involved in the children’s lives. First and foremost, when he was involved, he made in-kind contributions in the form of gift cards and dining out. Had these contributions been more frequent, it would have reduced Rosemary’s burden. Next, the children of “The Docket” would have had the benefit of having both parents involved in their lives. Accordingly, Rosemary would not have had to be the sole caretaker and disciplinarian. The burden could have been shared more equally, reducing Rosemary’s stress and allowing her some free time. Lastly, If Freddie had been actively involved in the children’s lives when Rosemary was diagnosed with cancer, Rosemary would have had someone to help with childcare while she sought treatment. Instead, she had to balance a career and two children while dealing with all of the medical procedures associated with cancer treatment.

In sum, single mothers often bear the financial and parental burden of raising children. While the law requires that a father contribute financially, it does not require

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<sup>155</sup> *Mitchell v. Mitchell*, No. 2-00-0005 (Ill. App.Ct. 2001).

him to take part in caregiving for the child. Accordingly, the absence of such a requirement is unduly burdensome on single mothers and is demonstrative of gender inequality, whereby women are obligated to care for children and men can be parents at their the discretion.<sup>156</sup>

### **Conclusion**

The burden on single mothers to raise children alone, without the financial and parental support of the non-custodial father, at the fault of the law, is reprehensible. Until the law holds men accountable for the children that they helped create, many women will be doomed to a life of poverty and continuous struggle by the inaction of the law. We as a society should demand that the courts and legislature strive to reach custodial and caretaking equality among men and women. Additionally, the judicial system should cease the use of gender-based stereotypes in custody determinations. If the law can reach a point where women are no longer the default parent, the goal of gender equality as it applies to child custody will prevail.

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<sup>156</sup> Czapanskiy, *supra* note 152, at 1434.